

OUR UNCONSCIONABLE NATIONAL
DEBT

HON. MIKE COFFMAN

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, May 21, 2013

Mr. COFFMAN. Mr. Speaker, on January 20, 2009, the day President Obama took office, the national debt was \$10,626,877,048,913.08.

Today, it is \$16,737,294,304,715.52. We've added \$6,110,417,255,802.44 to our debt in 4 years. This is \$6 trillion in debt our nation, our economy, and our children could have avoided with a balanced budget amendment.

ADDRESSING H.R. 3—THE
NORTHERN ROUTE APPROVAL ACT

HON. ALAN GRAYSON

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, May 21, 2013

Mr. GRAYSON. Mr. Speaker, I would like to submit the following:

MAY 21, 2013.

Hon. JOHN BOEHNER,
*Speaker, House of Representatives, The Capitol,
Washington, DC.*

DEAR MR. SPEAKER: I write today to address H.R. 3, the 'Northern Route Approval Act', and my resolution raising a question of privilege regarding the matter. Please note that this is a privileged motion and therefore outside the scope of the Rules Committee's jurisdiction regarding "the order of business of the House" (Rule X(1)(o)(1)). This is a question of privilege "affecting the rights of the House collectively, its safety, dignity, and the integrity of its proceedings" pursuant to Rule IX (1). It is not invoked to "effect a change in the rules . . . or their interpretation" ('House Rules and Manuals' at 420).

Consideration of this bill exceeds 'the rights of the House collectively' and brings into question the 'dignity and the integrity of [the] proceedings' of the House of Representatives (House Rule IX) because: 1) it is unconstitutional, and 2) it is an earmark.

I presented this matter to the full House in H. Res. 225 as a question of privilege last night, and I noticed the question immediately following the only vote series of the day.

Mr. Speaker, pursuant to Rule IX of the House you must now 1) make your determination as to whether or not this is an appropriate 'question of privilege', and 2) hold a vote on the resolution offered before the House. Before that happens, I would like to address the two claims I have made against the bill offered by the gentleman from Nebraska, and then I will outline the reasons why I feel you should find in favor of my question of privilege.

H.R. 3 IS UNCONSTITUTIONAL

"The . . . Constitution does not permit Congress to execute the laws."

The above is taken from the Supreme Court's ruling in *Bowsher v. Synar*. The bill before us violates this principle. Congress creates the law, and the Executive executes it.

Under Section 3 of this bill however, "the final environmental impact statement (FEIS) issued by the Secretary of State on August 26, 2011", and "the Presidential permit required for the pipeline described in the

application filed on May 4, 2012, by TransCanada Keystone Pipeline, L.P. to the Department of State . . . as supplemented to include the Nebraska reroute evaluated in the Final Evaluation Report issued by the Nebraska Department of Environmental Quality in January 2013 and approved by the Nebraska governor" shall "be considered [deemed] to satisfy all requirements of 1) the National Environmental Policy Act of 1969, and 2) the National Historic Preservation Act". This is a clear attempt by this body to execute the law of the land.

Again Mr. Speaker, the Executive must execute the laws. H.R. 3 runs afoul of this requirement. The Supreme Court also held in *Bowsher v. Synar* that "[i]nterpreting a law enacted by Congress to implement the legislative mandate is the very essence of 'execution' of the law", and that is exactly what is being proposed here. The exercise of judgment in the bill before us, concerning facts that affect application of statute, constitutes execution of the law. It is an unconstitutional act that this body should not entertain. It violates separation of powers, and violates the principle underlying the prohibition of bills of attainder.

Statements are deemed by this bill to be in compliance with laws the Executive has been tasked with executing—the National Environmental Policy Act of 1969 (NEPA) and the National Historic Preservation Act (see section 3 of H.R. 3). This is an impermissible execution of the law. Congress, through this bill, is attempting to apply the facts of the Keystone XL Pipeline environmental impact statement to the body of law, and deciding that they comply. This is unconstitutional and brings into question the 'dignity and the integrity of [the] proceedings' of the House.

Apparently, we are no longer satisfied with writing the laws. We have now taken it upon ourselves to execute them as well. This discredits the institution not only within the federal government (complicating our constitutional relationship with both the executive and judicial branches), but also in the eyes of the American people. We must not allow the House to be degraded in such a way.

Even when the facts of the bill are examined, this measure fails. This bill states that the FEIS satisfies NEPA. That FEIS however, was for a different project—the Keystone XL Pipeline as proposed in 2009, a pipeline which would have terminated in the Gulf Coast. The NEPA process for that proposal ended when the State Department denied the Presidential Permit application and issued a Record of Decision pursuant to 40 C.F.R. §1505.2. The current proposal is different. It has a different route, different purpose and need, different NEPA process, and more. This bill, however, deems the (outdated) FEIS for the previous proposal to comply with NEPA for the purposes of approving the current proposal. This leap of logic is untenable, and again, compromises the dignity and integrity of the proceedings of this body.

Finally Mr. Speaker, Section 4 of this bill states: "no Presidential permit shall be required for the pipeline described in the application filed on May 4, 2012 by TransCanada . . .". This section encroaches upon the President's independent constitutional authority over matters of foreign affairs. As a Member of the House Committee on Foreign Affairs, I am intimately familiar with Article II of the Constitution. Today, this body intends to ignore it and trample our Founding Document. I refuse to stand idly by and participate any longer. The Department of State does not issue Presidential permits based on any statutory authority from Congress; rather, the President delegated his inherent constitutional authority over matters

of foreign affairs to the Department of State in Executive Order 13337. The President and Department of State have independent authority to act in this field, not Congress.

For these reasons Mr. Speaker, I feel that H.R. 3 is unconstitutional, and that any consideration of the bill affects the dignity and integrity of the institution.

H.R. 3 IS AN EARMARK

Rule XXI (9)(a)(1) states:

"(a) It shall not be in order to consider—

"(1) a bill or joint resolution reported by a committee unless the report includes a list of congressional earmarks. . . ."

'Congressional earmark' is defined in Rule XXI (9)(e) in the following way:

"(e) For the purpose of this clause, the term "congressional earmark" means a provision or report language included primarily at the request of a Member, Delegate, Resident Commissioner, or Senator providing, authorizing or recommending a specific amount of discretionary budget authority, credit authority, or other spending authority for a contract, loan, loan guarantee, grant, loan authority, or other expenditure with or to an entity, or targeted to a specific State, locality or Congressional district, other than through a statutory or administrative formula-driven or competitive award process."

Restated, using only the words of the Rule, in the order in which they appear, a 'congressional earmark' is:

"a provision . . . included primarily at the request of a Member . . . providing [or] authorizing . . . a . . . grant . . . to an entity . . . other than through a statutory or administrative . . . or competitive award process."

Mr. Speaker, Section 6 of H.R. 3 satisfies every one of these criteria. It grants not only a right-of-way, but also a temporary use permit, outside of established statutory, administrative, and competitive award processes, and it does so to only one entity—explicitly named in this bill 'TransCanada Keystone Pipeline, L.P.'.

The requirement that this provision be included 'primarily at the request of a Member' is surely satisfied by the act of a Member drafting and offering this bill. It was a conscious choice of a Member from the state of Nebraska to offer this legislation, as well as explicitly mention Nebraska or Nebraskans six separate times, while no other state receives a single mention.

Clearly Mr. Speaker, this is an earmark.

As such, beyond the determination as to the question of privilege which I have raised, I would also assert that H.R. 3 violates the Rules of the House. Not one of the reports filed by the Committee on Transportation and Infrastructure, the Committee on Energy and Commerce, or the Committee on Natural Resources includes a list containing the congressional earmark that appears in this bill. Rule XXI (9)(a)(1) is violated.

For these reasons (among others) Mr. Speaker, I respectfully request your determination that my question and resolution before the House is privileged. H.R. 3 is unconstitutional, it is an earmark, and it violates the Rules of the House. Therefore, any consideration of this bill is an action which affects the dignity and the integrity of the proceedings of the House pursuant to Rule IX.

If you have any questions regarding this letter, please do not hesitate to contact me or David Bagby of my staff.

Sincerely,

ALAN GRAYSON,
Member of Congress.